

PUBLIC NOTICE
PROPOSED REVISION
OF
CRITICAL RESOURCE WATERS DESIGNATION

On September 14, 2000, the District Engineer (DE), U.S. Army Corps of Engineers (Corps), Tulsa District, designated certain waters within the State of Oklahoma as Critical Resource Waters (CRW).

This designation pertained to Nationwide Permit (NWP) General Condition No. 25 (Federal Register, Vol. 67, No. 10, January 15, 2002, page 2093) relative to the Corps responsibilities under Section 404 of the Clean Water Act (CWA)(33 USC 1344) and Section 10 of the Rivers and Harbors Act (RHA) of 1899 (33 USC 403).

The September 2000 designation of CRW referenced OWQS (effective July 12, 1999)(OAC 785: Chapter 45), and included waters specifically listed as:

1. Outstanding Resource Waters (ORW) in Appendix A,
2. High Quality Waters (HQW) in Appendix A, and
3. Areas which contain Federally-listed Threatened or Endangered Species in Appendix B, Table 2.

The Oklahoma Department of Environmental Quality (ODEQ) is the State agency responsible for certifying compliance with and enforcement of Oklahoma's Water Quality Standards (OWQS). The Corps, in coordination with the ODEQ, is proposing to revise the CRW list. The ODEQ has requested that CRW be expanded to include all waters within the watersheds of ORWs as described in subparagraph 1 above. The basis for this request is the Antidegradation Requirements in Subchapter 3 of the OWQS for ORWs are applicable to the waters listed as ORW or Scenic Rivers in Appendix A as well as waters of the State located within the watersheds of Scenic Rivers. Therefore, to allow these waters to be treated consistently under the NWPs of the Department of the Army Permit Program pursuant to Section 404 CWA and Section 10 RHA, the Corps, Tulsa District, proposes to incorporate the text "and all waters located in watersheds of these ORWs" into the designation of ORWs as CRWs in Tulsa District.

The Corps is also proposing deletion of the Appendix B, Table 2 waters, "Areas Which contain Federally-listed Threatened or Endangered Species" from the CRW list. The bases for this proposed deletion are: (1) General Condition 25 automatically includes all designated Critical Habitat waters as CRW without further action by the Corps, (2) the Corps's responsibility as the Federal decision agency to comply with the Endangered Species Act for all permit actions, (3) the protections of General Condition 11 which prohibits any activity which is likely to jeopardize the continued existence of listed species or species proposed for listing, and (4) OWQS Appendix B, Table 2 does not include all Critical Habitat or endangered species areas within the state and would misinform the regulated public. For informational purposes, the current designations of Critical Habitat involving aquatic areas within the Tulsa District geographic area are listed below under "Existing Critical Habitat Designations". As additional Critical Habitat is designated in aquatic areas, it would automatically qualify as CRW without further revision or modification of this listing.

Proposed Designation: The Corps, Tulsa District, proposes the following waters to be designated as CRWs.

a. Waters designated ORW in Appendix A of the OWQS (July 12, 1999) as follows, and all waters located in watersheds of these ORWs:

1. Flint Creek (all) in Adair County and the following tributary: Sager Creek.
2. Illinois River - North from the confluence of the Barren Fork River in Cherokee, Adair, and Delaware Counties, east to the Arkansas State Line, and the following tributaries: Tahlequah Creek and Ballard Creek.
3. Barren (Baron) Fork River - In Cherokee and Adair Counties, from its confluence with the Illinois River, upstream to the Arkansas State Line, and including the following tributaries: Tyner Creek, Dennison Hollow, Peach eater Creek, Scraper Hollow, England Hollow, Green Creek, Shell Branch, and Evansville Creek.
4. Mountain Fork River - Upstream of the 600 feet above mean sea level (msl) elevation (upstream of Broken Bow Reservoir) in McCurtain and LeFlore Counties, and the following tributaries: Boktuklo Creek, Blue Creek, Big Eagle Creek, Little Eagle Creek, Cucumber Creek, Beech (Beach) Creek, Cow Creek, and Panther Creek.
5. Big Lee Creek - Above 420 feet msl elevation in Sequoyah County, and the following tributaries: Webbers Creek and Briar Creek (Bear Creek).
6. Little Lee Creek, in Adair and Sequoyah Counties, and the following tributary: Jenkins Creek.

b. Waters designated HWs listed in Appendix A of the OWQS (July 12, 1999):

1. Water Quality Management Basin 1, Middle Arkansas River: Lower Illinois River from headwater of Robert S. Kerr Reservoir to Tenkiller Dam, Fourteen Mile Creek, Spring Creek, Little Spring Creek, Brush Creek, Beaty Creek, Honey Creek, Cave Springs Branch, Warren Branch, Pecan Hollow Creek.
2. Water Quality Management Basin 2, Lower Arkansas River: Lee Creek downstream from 420 feet msl, Black Fork upstream from Cedar Creek, Sallisaw Creek upstream from U.S. Route 64.
3. Water Quality Management Basin 3, Upper Red River: Pennington Creek, Guy Sandy Creek, Honey Creek, Crater Creek, Panther Creek, West Cache Creek upstream from Panther Creek.
4. Water Quality Management Basin 4, Lower Red River: Little River from the Arkansas State Line to Pine Creek Dam, Mountain Fork River upstream from U.S. Route 70 bridge to Broken Bow Dam, Lukfata Creek, Glover River, Cedar Creek above Glover River, Carter Creek, Pine Creek, West Fork of Glover River, Bluff Creek, East Fork of Glover River, Cypress Creek, Little River upstream from and including Pine Creek Reservoir, Pine Creek, Terrapin Creek, Houston Creek, Cloudy Creek, Jack Creek, Black Fork, Cedar Creek above Kiamichi River, Blue River upstream from State Route 48A Bridge.
5. Water Quality Management Basin 7, Panhandle Region: North Canadian (Beaver) River upstream from Texas State Line to New Mexico State Line, Cimarron River upstream from the Colorado State Line to the New Mexico State Line.

Maps: The location and extent of these waters are shown in the enclosures (Enclosures 1 through 6).

Definition and Applicability (Text of General Condition 25): The CRW include NOAA-designated marine sanctuaries, National Estuarine Research Reserves, National Wild and Scenic Rivers, critical habitat for Federally-listed threatened and endangered species, coral reefs, State natural heritage sites, and outstanding National resource waters or other waters officially designated by a State as having particular environmental or ecological significance and identified by the DE after notice and opportunity for public comment. The DE may also designate additional CRWs after notice and opportunity for comment.

- a. Except as noted below, discharges of dredged or fill material into waters of the United States are not authorized by NWP 7, 12, 14, 16, 17, 21, 29, 31, 35, 39, 40, 42, 43, and 44 for any activity within, or directly affecting, CRWs, including wetlands adjacent to such waters. Discharges of dredged or fill materials into waters of the United States may be authorized by the above NWPs in National Wild and Scenic Rivers if the activity complies with General Condition 7. Further, such discharges may be authorized in designated critical habitat for Federally-listed threatened or endangered species if the activity complies with General Condition 11 and the U.S. Fish and Wildlife Service (USFWS) has concurred in a determination of compliance with this condition.
- b. For NWPs 3, 8, 10, 13, 15, 18, 19, 22, 23, 25, 27, 28, 30, 33, 34, 36, 37, and 38, notification is required in accordance with General Condition 13, for any activity proposed in the designated CRWs including wetlands adjacent to those waters. The DE may authorize activities under these NWPs only after he determines that the impacts to the CRWs will be no more than minimal.

Existing Designations of Critical Habitat: By the terms of General Condition 25, the following waters are automatically granted status as CRW based on their designation by the USFWS as Critical Habitat for endangered species. More information on endangered species and their habitat is available from the USFWS webpage: <http://ifw2es.fws.gov/EndangeredSpecies/>.

1. Black Fork Creek in Pushmataha County from its junction with Little River upstream to State Route 144 crossing.
2. East Fork and West Fork Creek. East Fork of Glover Creek (River), main channel in McCurtain County from its junction with the West Fork Glover Creek (River) upstream to 4 air-miles north-northwest of the community of Bethel.
3. West Fork Glover Creek (River), main channel in McCurtain County from its junction with the East Fork Glover River upstream to the community of Battiest.
4. Glover Creek main channel in McCurtain County from State Route 7 crossing upstream to the junction of the East Fork and West Fork of the Glover Creek (River).
5. Little River, main channel in Pushmataha County from the mouth to Cloudy Creek upstream to the Pushmataha/Le Flore County Line.
6. Little River below Pine Creek Reservoir in McCurtain County.
7. Mountain Fork Creek (River), main channel in McCurtain County from the mouth of Boktukola Creek 6 air-miles south-southwest of Smithville, upstream to the Oklahoma-Arkansas State Line.
8. Salt Plains National Wildlife Refuge
9. Canadian River, from Hanna, Oklahoma, upstream to Canadian, Texas, from Lake Meredith upstream to Logan Village New Mexico.
10. North Canadian River, from Seiling, Oklahoma, upstream to Hardesty, Oklahoma.

11. Cimarron River, Waynoka, Oklahoma upstream to Kismet, Kansas.
12. Arkansas River, Arkansas City, Kansas. vicinity upstream to Syracuse, Kansas.

Other waters which provide habitat (not designated Critical Habitat) for endangered or threatened species:

1. Kiamichi River above Hugo Reservoir in Pushmataha and Le Flore Counties.
2. Neosho (Grand) River above Miami in Craig and Ottawa Counties.
3. Red River
4. Canadian River
5. North Canadian River
6. Cimarron River
7. Salt Fork Arkansas River
8. Arkansas River

Environmental Considerations: Our preliminary determination is that the proposed designation will not affect listed Endangered Species or their critical habitat. A copy of this notice is being furnished to the USFWS and appropriate State agencies. This notice constitutes a request to those agencies for information on whether any listed or proposed-to-be-listed endangered or threatened species may be affected by this designation.

Comments: As required by regulation, designation or revision of CRW by the DE requires public notice and opportunity for comment. The Corps is soliciting comments from the public; Federal, State, and local agencies and officials; Indian Tribes; and other interested parties in order to consider and evaluate the impacts of this proposed designation. All factors which may be relevant to the proposal will be considered, including the cumulative effects thereof; among those are conservation, economics, aesthetics, general environmental concerns, wetlands, historic properties, fish and wildlife values, flood hazards, flood plain values, land use, navigation, shoreline erosion and accretion, recreation, water supply and conservation, water quality, energy needs, safety, food and fiber production, mineral needs, considerations of property ownerships, and, in general, the needs and welfare of the people.

Comments are used in the preparation of an Environmental Assessment and/or an Environmental Impact Statement pursuant to the National Environmental Policy Act. Comments are also used to determine the need for a public hearing and to determine the overall public interest of the proposed activity. Any person may request in writing, within the comment period specified in this notice, that a public hearing be held to consider this designation. Requests for public hearings shall state, with particularity, the reasons for holding a public hearing.

The proposed designation would be approved by the DE, if necessary, to ensure that NWP's will authorize only those activities that result in minimal adverse effects on the aquatic environment, individually and cumulatively. A determination to designate CRW's will be based on a decision that there will be value added to the aquatic environment, consistency with existing law and regulation, and capability of being implemented, while not excessively burdensome on the regulated public.

Comments must be received by the DE not later than 30 days from the date of this public notice.

Comments on this proposed change in the designation of CRWs should be submitted in writing to the ATTN: Regulatory Branch, Tulsa District, U.S. Army Corps of Engineers, 1645 South 101st East Avenue, Tulsa, OK 74128-4609.

If additional information is desired, it may be obtained from Mr. Andrew R. Commer, at the same address, or by telephone at 918-669-7616. For information on the Department of the Army Permit Program or terms of specific NWPs, please refer to the internet at:
<http://www.swt.USACE.army.mil/permits/permits.cfm>.

Larry D. Hogue, P.E.
Chief, Planning, Environmental,
and Regulatory Division

Enclosures